

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3

4 * * * * *

5 THE CITY OF HUNTINGTON,

6 Plaintiff,

7 vs.

CIVIL ACTION

NO. 3:17-01362

8 AMERISOURCEBERGEN DRUG
9 CORPORATION, et al.,
10 Defendants.

11 _____
12 CABELL COUNTY COMMISSION,

13 Plaintiff,

14 vs.

CIVIL ACTION

NO. 3:17-01665

15 AMERISOURCEBERGEN DRUG
16 CORPORATION, et al.,
17 Defendants.

18 * * * * *

19 Videotaped and Zoom videoconference
20 deposition of CRAIG MCCANN, PH.D. taken by the
21 Defendants under the Federal Rules of Civil
22 Procedure in the above-entitled action, pursuant to
23 notice, before Jennifer Vail-Kirkbride, a Registered
24 Merit Reporter, on the 1st day of September, 2020.

1 morning, but I'll try to speak up.

2 Q. Okay, so Doctor McCann, I am going to refer
3 collectively to those instances of prior testimony
4 as your prior opioid testimony. Is that fair?

5 A. Yes.

6 Q. Okay. And since giving your prior opioid
7 testimony, have you developed any additional
8 expertise related to suspicious order monitoring for
9 pharmaceuticals?

10 A. No.

11 Q. You don't hold yourself out as an expert
12 today in suspicious order monitoring?

13 A. Correct.

14 Q. Have you -- since giving your prior opioid
15 testimony, have you reviewed the suspicious order
16 monitoring programs for any of the distributor
17 defendants in this case?

18 A. No.

19 Q. Do you know or have you come to learn since
20 giving your prior opioid testimony whether any of
21 the distributor defendants has ever used any of the
22 five flagging methodologies that you discuss in your
23 report?

24 A. No.

1 Q. Have you since giving your prior opioid
2 testimony formed any opinion as to whether any of
3 the five flagging methods that you discuss in your
4 report are appropriate for identifying flagged
5 orders?

6 A. Well, they are certainly appropriate for
7 the purpose I put them to in this report. I'm not
8 opining that any one of them individually should be
9 implemented by any of the distributors that would --
10 that would require more work and more information
11 about the internal systems I have, but for the
12 purposes that I put them to, they were certainly
13 appropriate.

14 Q. Okay. And that sort of leads to my -- my
15 next question, which is whether since giving your
16 prior opioid testimony, you have formed any opinion
17 as to whether any of the five flagging methodologies
18 that you discuss in your report is appropriate for
19 identifying suspicious orders?

20 A. Not beyond the answer I gave you to the
21 previous question. They are appropriate for the
22 purpose that I put them to in this report. They
23 would need to be developed further or enhanced with
24 internal information at the distributors that I

1 don't have and would require more work, but
2 conceptually I think that -- that they would be
3 useful and for the distributors and they are
4 certainly appropriate for the purpose I put them to.

5 Q. Okay. Doctor McCann, I don't mean this in
6 any sort of pejorative sense, but you, yourself,
7 have testified multiple times repeatedly, you are
8 just the calculator. Do you recall testifying to
9 that effect?

10 A. Yes, at least in some context, including
11 significant aspects of my work here, that's correct.

12 Q. And -- and so do you -- you stand by that
13 with respect to the opinions and conclusions that
14 you set forth in your report in -- in this case?

15 A. Well, certainly with respect to the
16 flagging methods you were just asking me about. I
17 think that that is approximately half of the report,
18 maybe less than half -- maybe substantially less
19 than half of the report. The rest of the report
20 deals with processing the ARCOS data and producing
21 summaries of that data. And I -- I think that goes
22 beyond being a simple calculator.

23 But when I have in the past discussed
24 the flagging methods, I explained that I took that

1 bring down or a bring forward, you -- you have been
2 asked a lot about prior discussions that you may
3 have had with other experts for the plaintiffs in
4 these opioid lawsuits, and that testimony stands as
5 it is and I don't intend to ask you again about any
6 meetings that you may have had or discussions that
7 you may have had with Mr. Rafalski, for example, or
8 any of the other plaintiffs' experts.

9 But I am interested to know whether
10 since you gave your prior opioid testimony, you had
11 any additional discussions? Let's start with
12 Mr. Rafalski?

13 A. Yes. I have.

14 Q. Okay. When was that?

15 A. Saturday morning, this past weekend.

16 Q. And since your prior opioid testimony, is
17 that the only discussion you have had with
18 Mr. Rafalski?

19 A. Yes.

20 Q. Was anyone else a part of that discussion?

21 A. Yes, some of the plaintiffs' lawyers were
22 on that call. They -- they coordinated it and I
23 participated.

24 Q. Okay. So just in terms of the attendance

1 list, we have got you, we have got Mr. Rafalski,
2 Certain plaintiffs' attorneys. Anyone else?

3 A. Yes. One staff member from my office, Mike
4 Yan, Y-A-N.

5 Q. Anyone else?

6 A. No, I think the others were -- were lawyers
7 or staff at the law firms. There were three or four
8 people on the call besides Mr. Rafalski, Mike, and
9 myself.

10 Q. Was it a videoconference like this or a
11 phone call or --

12 A. A videoconference, yes.

13 Q. Were there any written materials,
14 PowerPoint slides, other documents exchanged before
15 or during the meeting?

16 A. No.

17 Q. How long was the meeting?

18 A. Approximately 30 minutes. It might have
19 been five or ten minutes more or less, but there was
20 -- it was approximately 30 minutes.

21 Q. What was the purpose of the meeting?

22 A. Well, I'm not entirely certain. I didn't
23 organize it. I can tell you about the substance of
24 the -- what I participated in. I can't really -- I

1 don't know what the purpose was.

2 Q. Okay. Please do.

3 A. Well, the -- the main thing I remember is
4 that there were some details of our flagging methods
5 that -- that I think we have discussed in prior
6 depositions that may not be fully explained in the
7 expert reports. And Mr. Rafalski had some
8 understanding of what we had done, and he just
9 wanted to confirm that his understanding was correct
10 directly with me. He had received an understanding
11 of what we had done as a result of back and forth
12 through the attorneys, and he wanted to just ask
13 some questions and confirm directly with us that
14 understanding. And that's what we did.

15 Q. Okay, just so I'm sure that I'm following
16 your answer, is it your testimony that Mr. Rafalski
17 was attempting to confirm his understanding of how
18 you and your team applied one or more of the
19 flagging methodologies?

20 A. Yes, I think that is how I would
21 characterize it. As I said, he -- he had an
22 understanding. It turned out to be correct. I
23 don't think that we -- we ended up correcting or
24 changing his understanding in any way, but he had an

1 understanding of exactly how we had implemented the
2 flagging methods as a result of communications with
3 us through the lawyers. But since he had been asked
4 in prior depositions about his understanding, he
5 just wanted to confirm that -- that his
6 understanding was correct.

7 That's what I -- that's what I took
8 away from the discussion, although, again, what he
9 wanted to do or what the attorneys who set up the
10 call wanted to do, I don't know. You would have to
11 ask them. I can only tell you what I experienced
12 during that 25- or 30- or 35-minute call. And it is
13 as I described it.

14 Q. You mentioned that Mr. Rafalski -- first,
15 let me back up. Was the discussion that you had
16 with Mr. Rafalski related to all of the flagging
17 methods or some number of them less than all?

18 A. Some number less than all. Well, I'm
19 sorry. There might be some aspect of some of the
20 discussion that would touch on all of them. I guess
21 there was, but, uhm, any sort of detail questions
22 would have been on -- on only a subset of the five
23 or six flagging methods.

24 Q. Okay. Can you expand for me, please, on

1 document out and send it to you?

2 A. I don't recall precisely. I saw this first
3 a couple of years ago when we started and I'm
4 certain that I didn't independently identify this
5 document and ask the lawyers for a copy. Exactly
6 how they, to use your language, picked it out and
7 sent it to me, I don't recall. Whether it was
8 something that they -- they left me for context
9 early on or exactly how I -- how I first came into
10 possession of this, but it was -- it was a couple of
11 years ago.

12 Q. Doctor McCann, you did not independently go
13 out and obtain a copy of this opinion yourself, did
14 you?

15 A. Correct.

16 Q. How do you use the Masters decision in your
17 analysis?

18 A. Uhm, well, to just get a -- a general sense
19 of -- of what the Court -- to get a general sense of
20 what the Court described as a potentially suspicious
21 order.

22 Q. Okay. Does the Masters decision describe
23 the assumption you were asked by plaintiffs' counsel
24 to apply?

1 A. No, it doesn't provide that level of
2 detail.

3 Q. Is the Masters decision the only document
4 that you used to develop your computer algorithm for
5 the maximum monthly trailing six-month threshold
6 methodology?

7 A. Well, not literally. Of course, there is a
8 lot of work done with the ARCOS data and a lot of
9 documents that went into that, but if you are
10 talking about after all of that is done, that we sit
11 down with the data so that -- to implement this
12 first algorithm, I guess at some level that's
13 correct. I can't think of any other document
14 besides this document that -- that I used at least
15 conceptually to think about the first algorithm.

16 Q. You didn't review any operating procedures
17 for the Masters suspicious order monitoring program?

18 A. Correct.

19 Q. You didn't refer to any witness testimony
20 taken during the Masters case.

21 A. Correct.

22 Q. You didn't talk to anyone at Masters
23 Pharmaceuticals about its suspicious order
24 monitoring program?

1 I would have agreed with you, yes. But then when
2 you add that phrase, you are characterizing what we
3 did in our code incorrectly.

4 Q. Masters did not compare a calendar month
5 shipments to those shipments made during the prior
6 six calendar months; correct?

7 A. Correct.

8 Q. Masters compared a rolling 30-day shipment
9 history to shipments made during the prior six
10 months; correct?

11 A. That is what this document says.

12 Q. Yes or no, sir?

13 A. I don't know what they actually did. I am
14 just saying -- that's how I understand what you just
15 read out of this document.

16 Q. And you agree that your computer algorithm
17 for the maximum monthly trailing six-month threshold
18 methodology does not follow what we have read here
19 in the operating procedures for the SOMS program
20 described in the Masters Pharmaceutical
21 Comprehensive Compliance Policy Manual that has been
22 marked as Exhibit 6?

23 A. Correct.

24 Q. If we could turn back to page 61 of your

1 Q. And you agree, sir, that your trailing
2 six-month maximum monthly fixed after first
3 triggered threshold methodology does not follow the
4 operating procedures of the SOMS program described
5 in the Masters Pharmaceutical Comprehensive
6 Compliance Policy Manual, Exhibit 6?

7 A. Correct.

8 Q. Let's turn to page 68 in your report,
9 sir. Page 68, you describe methodology 4, the three
10 times trailing 12-month average pharmacy dosage
11 units. Do you see that, sir?

12 A. Yes.

13 Q. In paragraph 117, you describe this
14 methodology 4 and it reads "Under the fourth
15 approach, I identify transactions that cause the
16 number of dosage units shipped by a distributor
17 defendant to a pharmacy in a calendar month to
18 exceed three times the trailing 12-month average
19 dosage units to retail and chain pharmacies served
20 by the distributor defendant." Did I read that
21 correctly, sir?

22 A. Yes.

23 Q. You developed a computer algorithm to
24 operationalize the three times trailing 12-month

1 or the fourth method intended to implement the
2 Chemical Handler's Manual. I think as we have
3 discussed before, each of these methods are stylized
4 illustrations suggested by the underlying documents
5 that you have identified, not attempting to
6 implement these documents precisely.

7 MR. MOUGEY: Move to strike everything
8 after "yes."

9 Q. Doctor McCann, you reviewed the standard
10 operating procedures from McKesson's Lifestyle Drug
11 Monitoring Program, yes or no?

12 A. I apologize. Could you ask that again,
13 please, Mr. Eppich?

14 Q. Yes, of course. You reviewed the standard
15 operating procedures from McKesson's Lifestyle Drug
16 Monitoring Program; correct?

17 A. Correct.

18 Q. Now you cite to those standard operating
19 procedures in your list of materials considered;
20 correct?

21 A. Correct.

22 Q. And when you were designing your computer
23 algorithm to operationalize the maximum 8,000 dosage
24 units monthly, you had to choose which drugs to